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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/624,353
Filing Date: July 22, 2003
Appellant(s): BAUMEISTER ET AL.

Matthew J. Bussan
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/19/2007 appealing from the Office action mailed 08/03/2007.

(1) Real Party in Interest

A statement identifying by name the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6-14, and 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application Publication number US 2003/0236912 A1 to Klemets et al., hereafter referred to as "Klemets."

With regards to claim 1, Klemets discloses a method for streaming a media file over a distributed information system to a client computer running a browser application, the method comprising the steps of: receiving a request for a particular media file from a client computer (Klemets: Paragraph [0016]); providing a metafile, whereby said metafile contains information about the identification (Klemets: Paragraph [0038]. The "Title" field is information about the identification.), location (Klemets: Paragraphs [0012] and [0041]. The metadata includes a stream attribute identifying a media stream, where a media stream identifier has a one to one relationship with a URL, which means that the stream attribute constitutes location information.), and format (Klemets: Paragraph [0035]. The metadata can be the encoded bit rate and the language, both of which

constitute format.) of the media file, returning said metafile back to said client computer (Klemets: Paragraph [0039]), characterized in that the step of receiving a request for a particular media file from a client computer further comprises the steps of: intercepting a download request for the actual media file (Klemets: Figure 1. The media server intercepts the request from the client, and serves the media file from the file system to the client.) and reinterpreting said download request in a request for receiving a corresponding metafile (Klemets: Paragraph [0033]. As a result of the server receiving a request for a media file, the server requests metadata items from the file system and/or encoder. As the server is requesting items in addition to the one that the client requested, the request has been "reinterpreted" into a request for the media file and the metadata.).

With regards to claim 2, Klemets discloses that the step of reinterpreting said download request includes the step of deriving information about said corresponding metafile from a portion of the URL (Klemets: Paragraph [0031]. The URL determines the media file being requested, meaning that it is utilized, at least in part, to obtain the metadata.).

With regards to claim 3, Klemets discloses that the portion of the URL is the file extension of the requested media file (Klemets: Paragraph [0056]. The system of Klemets assigns attributes based in part if the format is ASF, which is the file extension as per paragraph [0031]).

With regards to claim 4, Klemets discloses that the step of providing a metafile comprises the steps of: dynamically generating a metafile (Klemets: Paragraph [0038]),

and statically querying a metafile (Klemets: Paragraph [0038]. As the metadata items may be obtained from a separate file, the file is “queried” for the information.).

With regards to claim 6, Klemets discloses that the step of providing a metafile further includes the step of retrieving information about the configuration of at least one item chosen from the group comprising: version of the streaming product, type of the streaming product, location of the media file, load of the servers, load of the network, location of the client, quality of service (Klemets: Paragraphs [0049], [0074], [0075]. The items in the list are broad, as information about the version of the streaming product could constitute the file name, which is included in Klemets. The type of the streaming product can constitute any number of elements, some examples being found in the cited paragraphs. Also, to meet the claim language, any configuration information meets the language, as the group **comprises** version, type, location, load of the servers, load of the networks, location of the client, and quality of service. The open-ended language does not exclude the configuration information from being an element not on the list.).

With regards to claim 7, Klemets discloses that the step of providing a metafile further includes reading information about the client's preferred streaming format and forming a metafile in accordance with the client's preference (Klemets: Paragraph [0044]. The client is able to select different parameters involved with the streaming media file, including whether the file will be played as just audio, or as audio and video. As the metafile is able to be generated based on the client's request, these factors would be at least read and used somehow to generate the metafile.).

With regards to claims 8-14 and 16-17, the claimed subject matter is substantially similar to the subject matter found in claims 1-4 and 6-7, and is rejected for substantially similar reasons.

With regard to claim 18, the instant claim is substantially similar to subject matter presented in claims 1-4, 6-13, and 15-17, with the exception that a MIME-type is provided at the metadata server and returned with the metafile to the client computer. However, Klemets discloses that a MIME type is included in the header, which is returned to the client (Klemets: Paragraph [0049]).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klemets over knowledge possessed by a person of ordinary skill in the art.

With regards to claim 5, Klemets discloses the invention as substantially claimed (see above for claim 1 rejected under Klemets) except checking predefined filter criteria determining of whether or not a metafile is to be returned instead of the requested media file.

A person of ordinary skill in the art would have known how to perform this functionality. If the metafile is returned, the media file is to be streamed. If the media

file is returned, then the media file is being downloaded rather than being streamed. The predefined filter can simply be the determination of what kind of request is being presented from the client.

It would have been obvious at the time of the invention to give the client a choice to download the media file or stream the media file, as represented by providing the metafile, in the system of Klemets.

The suggestion/motivation for doing so would have been that different system configurations and network configurations has a preference for downloading or streaming. In cases where memory is limited, streaming may be preferred. In cases where bandwidth is limited, downloading may be preferred, as the connection speed may not be able to support the streamed media, while a download would allow the user to access the media at an acceptable quality at a later time. Even if bandwidth is not limited, downloading may still be preferable as the client would have its own copy of the media file, allowing the client to access the file as often as desired without requiring a connection. Allowing a choice to be made based on the request, and providing a filter that determines whether the request should be responded to with metadata to allow streaming or the media file itself allows the client to optimize access to the file based on network conditions, the client's configuration, and the user's preferences.

With regards to claim 15, the claim is substantially similar to claim 5, and is rejected for substantially similar reasons.

(10) Response to Argument

Issue 1: Appellant argues on pages 14-17 of the Appeal Brief that Klemets does not disclose certain features of claim 1. More specifically, Appellant focuses on "receiving a request for a particular media file from a client computer".

First, it is noted that the phrase "receiving a request for a particular media file from a client computer" does not necessarily mean that the request is to download the particular media file. This point is similar to an argument presented in the Advisory Action mailed on 10/15/2007 on page 3, which Appellant did not ever address, even in the Appeal Brief. Even the phrase "intercepting a download request for the actual media file" does not necessarily mean that the request is a request to download the actual media file. In both cases, the phrases "for a particular media file" and "for the actual media file" could mean either that the request is *to acquire, or download*, the media file (which is the interpretation that Appellant is apparently relying upon), or that the request is *with regard or respect to* a particular media file (which is clearly within the scope of the instant claims, and is the interpretation relied upon by the Examiner).

According to MPEP 2111, claims must be given their broadest reasonable interpretation consistent with the specification. The instant application makes references to downloading the actual file, as Appellant argues, as well as requests to stream a media file (See, for example, the instant specification, page 4, paragraph 1). Thus, the broadest reasonable interpretation consistent with the specification of the phrase "for a particular media file" is "with regard or respect to a particular media file."

As the metadata file is a file that includes data about the media file, a request to obtain the metadata file is "with regard or respect to a particular file."

Accordingly, the interpretation that must be given to the instant claims is broader than the interpretation that Appellant argues with respect to claim 1. As such, the DESCRIBE method, as in Klemets, may include the streaming media header (metadata), and the DESCRIBE method is made with regard or respect to the particular media file that the user wishes to stream, and is thus for the particular media file.

Appellant further argues that intercepting and reinterpreting, as in claim 1, is not disclosed or suggested by Klemets. However, it is noted that the instant claim does not state what component intercepts the request, or that the component performing the interception step is not the intended destination. Further, the instant claim does not require that the request was interpreted initially, or that the reinterpreting is converting the request into a different kind of message. Any message that is transmitted from a client to a server, and is processed by the server can be said to be reinterpreted, as the client makes the initial interpretation when creating the message, then the server reinterprets the message in order to process the message. Without any functionality claimed with regard to these steps, or any explicit definition of these terms that has a limiting effect on the instant claims, these terms, in the context of the instant claims, must be given their broadest reasonable interpretation from the perspective of a person of ordinary skill in the art in light of the specification.

Issue 2: Appellant argues on pages 18-20 that Klemets does not disclose the features of claims 18 for the reasons stated with regard to claims 1 and 11 (see Issue 1), and additionally the sequential interactions with two different servers, the first being a metadata server and the second being a streaming server.

However, as Examiner previously argues, and recognized by Appellant (see page 19 of Appeal Brief, paragraph 3), the servers both may be implemented in software alone, with an exemplification that the servers have a mutual connection to a network (which clearly occurs if both server programs are utilized on the same computer device). According to the specification, a single computer program product can comprise all the features enabling the implementation of the methods described, which can carry out the methods when loaded in a single computer system (Specification, page 18, lines 18-21). It is noted that the instant specification never explicitly states that the two servers must be implemented on separate computing devices, only that they may be implemented on "a computer system, such as a personal computer, a laptop computer or a server computer" (Specification: Page 10, lines 14-15) in the case of the metadata server, or on "a server computer" (Specification: Page 11, lines 1-2) in the case of the deliver server (which is equivalent to the streaming server). Both servers are implemented as programs (Specification: Page 10, lines 14-15 and Page 11, lines 1-2) running on systems that do not necessarily appear to be dedicated to the functionality included within the server programs.

There is no explicit statement that the servers must be implemented on separate computing devices, nor is there a claim limitation that requires the servers to be

implemented on separate computing devices, or be distinct in any way other than being separate software portions to perform the different functions of the respective servers, nor that the separate servers utilize a network to communicate directly between the two servers. On the contrary, all communications appear to be between one of the servers and the client, not between the two servers, and definitely not between the two servers over a network within the disclosure of claim 18.

As such, claim 18 clearly covers embodiments where the streaming server and metadata server are on different computing devices as well as where the streaming server and metadata server are implemented as parts of the same computer program on a single computing device.

Issue 3: Appellant argues on pages 21-23 that a person of ordinary skill in the art would not have been able to perform the step of “checking predefined filter criteria determining of whether or not a metafile is to be returned instead of the requested media file.” First, it is noted that Appellant has not referenced the Advisory Action sent on 10/15/2007 at all in the Appeal Brief. Thus, the contents of the Advisory Action that pertain to this argument is presented below.

“On pages 12-13, Applicant argues that a person of ordinary skill in the art would have known how to perform the step of “checking predefined criteria determining whether or not a metafile is to be returned instead of the requested media file.” In response, the interpretation of the claim, and the logic for this assertion is presented below. However, if Applicant, in a subsequent response, continues to question this

feature, with specific arguments against the interpretation and the logic presented in points A to E, below, Examiner will present a reference to show this functionality.

A. A metafile is returned in situations where the media file is to be streamed, with the metafile including the necessary information for the client to properly stream the file.

B. "Checking predefined filter criteria," as claimed, only requires that the server applies some sort of rules, policies, or other instructions to determine to perform the claimed functionality.

C. Requests to perform specific functionality is very well known in the art. For example, a request to connect, a request to stream, a request to download, a request to disconnect, etc.

D. Having a server apply some sort of rules, policies, or other instructions to determine what kind of request was presented is well known in the art. For example, a server will apply some rules, policies, or instructions to determine if it received a "request to connect," "a request to stream," "a request to download," "a request to disconnect," etc.

E. The instant claims do not specific disclose what kind of request is received. The claims do not even require the basis for which the determination is made (e.g. the file is not available for streaming, the client has a certain amount of bandwidth making downloading a better option, or the specific kind of request is for either streaming or downloading, etc.).

Therefore, the limitation added by claims 5 and 15 are met if a server is capable of checking incoming requests to determine if the request was a request for download or a request to stream.

Applicant should amend the instant claim to demonstrate what kind of criteria are utilized in order to make the determination if the criteria is not intended to include determining what kind of request was made by the client. Otherwise, Applicant has specific arguments that the above points are somehow erroneous, Examiner will provide a reference to support the conclusions."

Examiner presented specific arguments of how this functionality would have been known to a person of ordinary skill in the art, and presented distinct ways for Appellant to argue that this functionality would not have been known to a person of ordinary skill in the art (i.e. to argue the logic presented in points A to E).

Further, the instant specification states "Usually, a HTTP protocol handler would answer an HTTP request by either returning the content of the resource requested (default HTTP behavior), or by executing the resource and forwarding it's reply (JAVA Servlets, CGI Scripts)." (Specification: Page 12, lines 1-3). Thus, it is clear that an HTTP protocol handler usually has the capability to determine what the request is and respond appropriately. This is equivalent to checking some predefined filter criteria to determine what kind of request was provided. Further, Appellant recognizes that HTTP has been used to stream files (Specification: Page 3, lines 13-15), and there is no question that HTTP can be used to download files. Clearly, servers that respond to

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requests must be able to identify what kind of request is being made in order to properly respond to the request.

Thus, having a server that is capable of checking incoming requests to determine if the request was a request for downloading the media file or a request to stream the media file is within the grasp of a person of ordinary skill in the art, and has been implemented in many servers, even those recognized in Appellant's specification as having existed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/S. C./

Examiner, Art Unit 2144

/William C. Vaughn, Jr./

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Conferees:

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